

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. See 86 Ill. Adm. Code 480.101. (This is a GIL.)

July 8, 2003

Dear Xxxxx:

This letter is in response to your letter dated February 7, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

Our company is updating our tax compliance information. We would appreciate your help with the enclosed questionnaire. It should take just a few minutes to complete.

The questionnaire that we have asked to be completed asks questions that are pertinent to our industry. We need written advice that we can rely on in our compliance efforts. If there is any expense associated with obtaining written advice to our request, please advise us. We are willing to pay for this information. Please understand that we will treat the completed questionnaire as written advice from your agency and rely on it to set our systems. We will also use this information to support our position if issues arise during audit by your agency.

We would also appreciate any brochures or pamphlets you may have as it relates to the hospitality business. A copy of a guest exemption certificate, if required, would also be appreciated.

We are answering your questionnaire in narrative form in order to provide a more complete explanation for you. The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. See 86 Ill. Adm. Code 480.101, enclosed. The Hotel Operators' Occupation Tax applies to gross receipts received from a person who occupies a room or becomes irrevocably liable to pay rent for the right to occupy a specific room or rooms. This means that when a person becomes liable for paying a charge to rent a room, those gross receipts are subject to tax whether or not the person shows up to occupy the room. Please refer to 86 Ill. Adm. Code 480.101(c)(1).

Receipts received from rentals to permanent residents are not subject to the tax. Permanent residents are persons who occupy or have the right to occupy such rooms for at least thirty consecutive days. See Section 480.101(a)(1). Because the Hotel Operators' Occupation Tax is based upon gross rental receipts, rooms provided gratis that generate no gross rental receipts would not enter into computation of the tax.

Receipts subject to the tax do not include those which are not in any way reasonably connected with or attributable to the renting, leasing or letting of rooms for use as living quarters or for sleeping or housekeeping accommodations. Examples of receipts not subject to the Hotel Operators' Occupation Tax include those from the selling of food (although food sales are subject to sales tax in Illinois), tickets for the right to use golfing or skiing facilities, rental of meeting or conference rooms, or the renting of parking spaces. Please refer to Section 480.101(b)(6).

Organizations that qualify as exclusively religious, charitable, or educational can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers ("E" numbers). These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes.

The Hotel Operators' Occupation Tax Act does not include any provision for the exemption of exclusively charitable, religious, or educational organizations, or for governments or their agencies. Therefore, hotel operators renting rooms to organizations possessing exemption numbers, or governmental units (State, Federal, local) are not exempt from paying the tax on room rentals to such entities and the above mentioned tax exemption identification numbers cannot be used to avoid this tax. See 86 Ill. Adm. Code 480.101(b)(4).

Please remember the Hotel Operators' Occupation Tax is not a tax imposed upon those guests renting the rooms. Rather, it is imposed upon persons (i.e., hotel operators) engaged in the business of renting, leasing or letting rooms in a hotel. However, hotel operators are allowed to reimburse themselves for their tax liability by collecting a corresponding amount of reimbursement from customers.

There are two factors we would like to stress in regard to this situation. First, the tax is not imposed upon the organization renting the room from the hotel operator. It is imposed, rather, upon the hotel operator. An exemption is useless in this context, because there is no tax that is being imposed upon the organization. There is no tax, in other words, from which the group could be exempted. Secondly, the terms of the Hotel Operators' Occupation Tax Act do not provide that exclusively charitable, religious or educational organizations or government agencies are exempted from paying the reimbursement charges which hotel operators are authorized to charge.

The only exemptions available to hotel operators are for rentals to permanent residents and to certain diplomatic personnel. Exemptions from the tax are explained in subpart (b) of the enclosed regulation. The exemption for rentals to certain diplomatic personnel applies only to diplomatic personnel possessing certain types of diplomatic tax exemption cards, issued by the U.S. Department of State, Office of Foreign Missions.

In general, hotels in Illinois incur a Use Tax liability upon items of tangible personal property they purchase for the purpose of supplying to guests, including toiletry and food items, whether these are automatically placed into the guest rooms or are available at the front desk or lobby area. Illinois registered vendors of hotel supply items incur Retailers' Occupation Tax liabilities upon sales and deliveries in Illinois, and they collect the corresponding Use Tax from their hotel customers. Hotels that purchase from unregistered out-of-State vendors must self-assess and pay the Use Tax directly

to this Department. Hotels also incur a Use Tax liability upon items purchased for use in the guest rooms or other locations, such as furniture, dishes, cutlery, etc.

The Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons, 35 ILCS 630/3 and 4. The Act defines gross charges as including amounts paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by retailers, 35 ILCS 630/2(a). When hotels provide telephone and facsimile services to guests, they are subject to the Telecommunications Excise Tax based upon the gross receipts of such services. This means the hotels should register as retailers of telecommunications and collect and remit the tax to the Department. See 86 Ill. Adm. Code 495.110, enclosed.

Hotels that receive revenues from dry cleaning or laundry services are acting as servicemen subject to the Service Occupation Tax Act, which imposes liability on the transfer of tangible personal property incident to sales of service. You can determine the appropriate method for calculating your tax liabilities based upon the following information.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon how the serviceman is classified. There are four ways that the tax can be calculated: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the

Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. See 86 Ill. Adm. Code 140.109.

Sales of food by hotels, whether in restaurants, coffee shops, or catered functions, are subject to Retailers' Occupation Tax. When individual members of exclusively charitable, religious or educational organizations, or individual employees of governments or their agencies, purchase meals or other tangible personal property from hotels, the hotels incur Retailers' Occupation Tax liabilities. However, if governments, churches, schools, or charities possess valid tax exemption identification numbers issued by this Department, and they directly purchase meals in performance of some organizational function, such as lunches for attendees of seminars conducted at hotels, then such purchases could be made tax free upon presentation of the Department issued exemption numbers.

Relative to meals sold by employers to employees, please be informed that such meals are generally subject to Retailers' Occupation Tax liability based upon gross receipts. However, a restaurant would not be liable for Retailers' Occupation Tax liability when it provides meals to employees free of any charge, so long as such employees are entitled to no additional compensation if they fail to eat such meals at the restaurant's place of business. See 86 Ill. Adm. Code 130.2050, enclosed. In these situations the restaurant employer would incur an Illinois Use Tax liability based upon the cost price of the food. The base (cost price of the food that is consumed) upon which the Use Tax is calculated, in the absence of evidence establishing a lower figure, is presumed to be 75 cents per meal. See Section 130.2050(c).

Under Illinois law, rental receipts from the rental of tangible personal property, such as VCRs, video cassettes, or audio visual equipment, under true leases are not subject to tax. The only exception is automobiles leased for one year or less. Illinois lessors incur a Use Tax obligation upon the cost price of tangible personal property they purchase for leasing purposes. See 86 Ill. Adm. Code 130.2010, enclosed.

Please be advised persons who take tangible personal property and permanently affix it to real estate act as construction contractors. See the enclosed copy of 86 Ill. Adm. Code 130.1940. Examples of construction contractors are persons who construct permanent structures or sell and install electrical systems, or parts thereof. See Section 130.1940(c). Construction contractors incur Use Tax and local Retailers' Occupation Tax reimbursement liabilities, payable to their suppliers, based upon their cost price of items which they purchase for subsequent incorporation into real estate.

When contractors perform repair work on permanently affixed items, the Department considers these to be construction contract situations and contractors incur Use Tax and local Retailers'

Occupation Tax reimbursement liabilities on cost prices of supplies and repair parts permanently affixed to realty. In contrast, persons who repair tangible personal property are generally acting as servicemen and are subject to tax as noted above.

You inquire if U.S. Postmarks are acceptable as timely filings. Please be advised that any report, claim, tax return, statement or other document required or authorized to be filed with or any payment made to the Department of Revenue, which document or payment is transmitted through the United States mail, will be deemed to have been filed with and received by the Department on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. See 86 Ill. Adm. Code 130.1201. Regarding management and franchise fees, please be informed such fees are generally not subject to sales tax in Illinois.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

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Associate Counsel

MAJ:msk
Enc.